

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 3999 of 2001 (S/S)
(Old No. 3413 of 1991)

Pratap Singh Mehra
S/o Sri U.S Mehra
R/o Village Airor
P.O. Pant Kotle (Ranikhet)
Almora.

.....Petitioner

Versus

1. Army School, through its Principal
Ranikhet.
2. Army Welfare Education Society
(AWES)
Army Headquarter, R.K. Puram
New Delhi.

.....Respondents

**Shri Vinod Tiwari and Shri G.C. Kandpal, learned counsel for the
petitioners.**

Shri P.C. Bisht, learned counsel for respondent No. 1.

Hon'ble Prafulla C. Pant, J

By means of this writ petition, the petitioner, has challenged the order dated 23.09.1990, passed by respondent No. 1, terminating the services of the petitioner. The petitioner has further challenged the order dated 24.12.1990, passed by Chairman, Army School, whereby the said authority has affirmed the order of termination on representation/appeal, filed by the petitioner.

2. Heard learned counsel for the parties.
3. Brief facts of the case are that petitioner was employed in the year 1982 with Army School, Ranikhet, as a Clerk. He was promoted as Head

Clerk/ Accountant vide order dated 17.03.1989. It is stated in the writ petition that the petitioner fell ill in July 1990 and sought extra ordinary leave without pay. It is alleged by the petitioner that instead of granting said leave to him, he was served with the memo dated 25.07.1990 and again thereafter served with the memos dated 26.07.1990, 27.07.1990 and 31.07.1990, directing him to join his duty immediately. It is stated in the writ petition that the petitioner was suffering from heart disease and as such due to his sickness he was unable to join his duties. The petitioner was served with the show cause notice dated 16.08.1990 (copy annexure-10 to the writ petition). In reply to said notice, the petitioner submitted explanation dated 27.08.1990 (a copy of which is annexure-11 to the writ petition). Finally the petitioner's services were terminated vide impugned order dated 23.09.1990. Against said order, the petitioner made a representation which was rejected by the Chairman, Army School, vide his order dated 24.12.1990. Hence this petition was filed before Allahabad High Court from where it has been received by transfer to this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

4. A counter affidavit is filed on behalf of the respondents, in which it is admitted that the petitioner was appointed as Clerk in Army School, Ranikhet and later promoted as Head Clerk. However, rest of the contents of the writ petition are not admitted and denied. It is stated in the counter affidavit that the

petitioner's duty was to maintain the school account books and the record. Twice audit team came to school for audit of the accounts but the petitioner avoided and abstained from his duty on the date when the audit party came to the school. It is further stated in the counter affidavit that the petitioner sought leave on the ground of ill health, which was not supported by medical certificate. On 20.07.2007, he sought twenty days leave, which was not granted to him. In para-4 of the counter affidavit, it is further stated that a earlier also Court of Inquiry was set up against the petitioner and he was found to be irresponsible and dishonest. The explanation given by the petitioner in response to show cause notice was not satisfactory and his services were terminated giving him two months salary in lieu of notice through cheque No. A-316-134454. According to the respondents, the petitioner was given sufficient time to improve his work but he absconded from the duty and suppressed a file leading disciplinary action against him. Lastly, it is stated that Army Welfare Education Society (herein after referred as AWES), which runs Army School, is not an instrumentality of the State and as such the writ petition is not maintainable.

5. In second appeal No. 171 of 2001 (Smt. Amba Joshi Vs. Management Committee, Army School and others) decided on 29.07.2004, this Court has held that Army Welfare Education Society is not an instrumentality of the State. The same view is expressed by the Punjab and Haryana High Court in

Ram Lubhai Vs. the Secretary, Ministry of Defence, 2004 Labour and Industrial Cases Page 1391. Jammu and Kashmir High Court in Asha Vs. Chairman Army Public School (W.R. Service No. 1415 of 1996) against which S.L.P. No. 6482 of 1997 was dismissed by the Supreme Court on 31.03.1997 also discloses the same view. In view of settled principle of law, the writ petition against the respondents is not maintainable and the petitioner could have filed a suit before the competent court.

6. Assuming for a moment that the respondents are amenable to the writ jurisdiction, even on the merits of the case, since opportunity of being heard was given to the petitioner, as is clear from the show cause notice (copy annexure-10 to the writ petition), a reply of which is annexure -11, was submitted by the petitioner before the impugned order of termination was passed by respondent No. 1, it cannot be said that the impugned order suffers from any illegality. This Court does not find any illegality even with the order passed by the respondent No. 2 i.e. Chairman, Army School, whereby appeal/representation of the petitioner was rejected, against the termination order.

7. Learned counsel for the petitioner submitted that due to illness the petitioner could not attend the school during audit time, as such, the approach adopted by the respondents is inhumane in disallowing the leave to the petitioner. The papers on record show that petitioner availed 65 days leave in a period of 135

working days. The authorities concerned were not satisfied with the work shown by the petitioner and this Court is not going to interfere with such factual satisfaction, which is based on the record.

8. For the reasons, as discussed above, the writ petition is liable to be dismissed. The same is dismissed. (All pending applications also stand disposed of).

Dt. 04.09.2007
S

(Prafulla C. Pant, J.)